

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3992 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MS PATEL & ORS

Versus

STATE OF GUJARAT & ORS

Appearance:

MR. A.K.Clerk for Petitioners

Mr. C.C.Bhalja, AGP for respondent no.1 State.

MR JR NANAVATI for Respondent No. 2, 3

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 22/06/98

ORAL JUDGEMENT

This petition has been filed for a direction to the respondent authorities to grant to the petitioners pay scale of Rs. 700-1600 and/or in the alternative pay scale of Rs. 550-900 with effect from 1.1.1973 and pay to the petitioners difference of arrears

of salary on that basis with retrospective effect, fix salary of the petitioners in the revised pay scale on that basis and to grant them increment and future salary on that basis. It is further prayed to direct the respondents to award benefits of the pay scale of Rs.700-1600 to the petitioners as revised by the Annexure "S" with effect from 1.4.1980 and give orders for payment within a period of one month and for giving further benefits of pay scales under Annexure "T" within a period of two months and orders of revised pay as applicable from time to time.

2. Heard the learned counsel for the petitioners, learned AGP Mr. C.C.Bhalja for the respondent State and learned advocate Mr. J.R.Nanavati for respondent nos. 2 and 3.

The petitioners are working as Physical Education Instructors in Agricultural Colleges of three campus affiliated to Gujarat Agricultural Universities situated at Anand, Navsari and Junagadh. The main controversy in the petition is whether the Physical Education Instructors are included in the definition of "teacher". This controversy is already settled by the Supreme Court in the case of PS Ramamohana Rao vs. AP Agricultural University and others reported in AIR 1997 SC, 3433 wherein it has been held that considering the degrees of the Physical Education Instructors, the appellant falls within the definition of "teacher" and is entitled to continue services till 60 years of age. It is under the relevant provisions of the A P Agricultural University Act, 1963, and the Regulations, Sub-clause (n) of section 2 defines "teacher" as follows:

" Teacher" includes a professor, reader, lecturer or other person appointed or recognised by the University for the purpose of imparting instruction or conducting and guiding research or extension programmes, and any person declared by the statutes to be a teacher".

A physical director has multifarious duties. He not only arranges games and sports for the students every evening and looks after the procurement of sports material and the maintenance of the grounds but also arranges inter-class and inter-college tournaments and accompanies the students team when they go for the inter-University tournaments. For that purpose it is one of his important duties to guide them about the rules of the various games and sports. It is well known that different games and sports have different rules and practices and unless the students are guided about the

said rules and practices they will not be able to play the games and participate in the sports in a proper manner. It is inherent in the duty of a Physical Director that he imparts to the students various skills and techniques of these games and sports. There are large number of indoor and outdoor games in which the students have to be trained. Therefore, he has to teach them several skills and the techniques of these games apart from the rules applicable to these games.

4. The learned counsel for the petitioners submitted that Physical Education Instructors of other universities and colleges have been treated as "teachers" and others have also been given pay scale of Rs. 550-90 with effect from 1.1.1973. Hence, the petitioners are also entitled to be treated as teachers and the petitioners pray for similar treatment. Gujarat University has also passed a resolution dated 30th August, 1977 extending pay scale of Rs. 550-900 to Physical Education Instructors. The State of Gujarat has passed a resolution revising the pay scale of Rs.300-600 to Physical Education Instructor to Rs.550-900 on 28.5.79. All Physical Education Instructors in all the Universities in the State except the respondent University and the petitioner were not given pay scale of Rs.550-900. The Government has also passed a Resolution dated 30th July, 1979 directing implementation of Government resolution dated 28.5.1979 with effect from 1.1.1973. The Principal of Anand College also sent a letter dated 15.3.80 stating therein that the petitioners were entitled to revised pay scale. The Deputy Director, Physical Education, Gujarat Agricultural University also wrote a letter dated 21.8.80 that the revision of pay scale of Physical Education Instructors was overdue.

5. The respondent University has filed its affidavit in reply. The Under Secretary, Government of Gujarat has filed an affidavit in reply. In para-22, it is admitted that in fact, ICAR recommending the pay scale of Rs.550-900 to the State Government sanctioning revision of pay scale to the Physical Instructors in Gujarat Agricultural University in the pay scale of Rs.550-900 with effect from 1.1.1973 notionally in the pay scale of Rs.700-1600 with effect from 1.4.80 from 1.4.80 notionally and in the pay scale of Rs.2200-4000 with effect from 1.1.86 . This was done by the Government Resolution, Agricultural and Rural Development Department dated 9.10.89. It is also clearly mentioned that recently the decision has been taken to grant the following pay scales to the physical Instructors, namely

(i) Pay scale of Rs.550-900 with effect from 1.1.73.

(ii) Rs.700-1600 with effect from 1.4.80 notionally.

(iii) Rs.2200-4000 with effect from 1.1.86 in the lines of UGC's recommendations.

5. The submission of the learned advocate for the petitioners is that other Physical Education Instructors of other colleges and Universities have already been paid by the State Government. Hence, the petitioners are also entitled for the same. The learned counsel for the University admitted in the Court that other Physical Education Instructors of other universities and colleges have already been given at the revised pay scale. The learned counsel for the petitioners also submitted that the Government has not denied the fact that Physical Education Instructors of other Universities and colleges have already been paid the revised pay scales.

6. Considering the facts and circumstances of the case, in my view, the petitioners are also entitled for the pay scales of Rs.550-900 with effect from 1.1.73 and pay scale of Rs.700-1600 with effect from 1.4.80. The petitioners are also entitled for the pay scale of Rs.3000-5000 with effect from 1.1.86 and pay scale of Rs.3700-5700 with effect from 1.7.80 on the required completion of their respective services and the petitioners are also entitled for arrears accordingly.

7. Accordingly, the respondents are directed to give to the petitioners the pay scale of Rs. 550-900 actually from 1.1.1973, and the pay scale of Rs. 700-1600 actually from 1.4.90, pay scale of Rs. 3000-5000 with effect from 1.1.86, pay scale of Rs.3700-5700 with effect from 1.7.86, 23.9.89 and 12.12.89 respectively on completion of 16 years service. The respondents are directed to calculate amounts of arrears accordingly within a period of three months and pay the same within a period of two months thereafter. Rule is made absolute accordingly. No order as to costs.

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